
(2004) 11 KAR CK 0030
In the Karnataka High Court
Case No : Writ Petition No. 54757 of 2003

T.D. Yogitha

APPELLANT

Vs

University of Agricultural Sciences

RESPONDENT

Date of Decision : 02-11-2004

Acts Referred:

University of Agricultural Science Regulations — Regulation 3.4
University of Agricultural Sciences Act, 1963 — Section 41, 5, 5 (2)

Citation : (2005) 1 KarLJ 1000 : (2005) 1 KCCR 16 SN

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : S.P. Shankar, for S.P.S. Associates, for the Appellant; H.N. Shashidhar, for H.K. Vasudeva Reddy, for the Respondent

Final Decision : Allowed

Judgement

S. Abdul Nazeer, J.—Petitioner in this petition has challenged the endorsement issued by the Respondent University bearing No. R/WP 27406/ T.D.Yogitha/2003 dated 30.10.2003 (Annexure-G), whereby the University has upheld its previous notification dated 12.04.2001 cancelling her admission to 1st Year B.Sc. (Agriculture) Course.

2. Facts in brief are as follows:

Petitioner had filed an application dated 22.07.1995 in the prescribed form to the Respondent - University seeking admission to the 1 Year B.Sc., (Agriculture) Course for the academic year 1995-96. Along with her application she has filed a Declaration that the information furnished in the application form are true and correct. It is stated in the declaration that if the information furnished in the application is incorrect or false, the admission granted to her can be cancelled at any time during the tenure of her study in the University. The petitioner was 17 years of age at the time of her admission. Her father namely. T.K. Devaraj had also filed Affidavit along with the application stating that he is an Agriculturist and that his main source of income is from the agriculture. In yet another

Affidavit was filed by the father of the petitioner it is stated that his annual income for 1994-95 from cultivation was Rs. 3,600/- Accordingly, the Petitioner was admitted to the respondent - University for the study of B.Sc. (Agriculture) Course for the academic year 1995-96, which is a four year Course.

3. Petitioner has prosecuted her studies in all the four years and she has appeared in the examination conducted by the respondent from time to time. The University has issued a Certificate of academic progress on 19.07.1999 as per Annexure- "F" certifying that she has successfully completed 130 credit hours out of the prescribed 150 credit hours with cumulative grade point average of 8.75/ 10.00 at the end of 7th Semester of 1998-99 and that she has registered for 20 credits for the 8th Semester. It is also not in dispute that the petitioner has appeared in the last Semester examination in August 1999 and has secured first class in the said examination.

4. It appears that on 8.8 1999 the University received a communication from some of the students studying in Final Year B.Sc. Agricultural course informing that the petitioner had secured the seat giving a false statement at the time of her admission. It was also informed that her father is an Engineer and her mother is a Government Servant and that they own 28 acres of garden land. On the basis of the information received, the Director of Instructions, Agricultural College, Shimoga, who was asked to hold an enquiry in the matter constituted a Committee, summoned the father of the petitioner and recorded his statement on 23.08.1999. Finally, the Committee prepared its report and sent it to the Registrar for further action. Thereafter, a show cause notice was issued to the petitioner on 21.09.2000 and the father of the petitioner has sent a reply to the said show cause notice. The University passed an order on 12.04.2001 cancelling her admission to the I Year B.Sc., Course made during the year 1995-96 under the Agriculturist Quota.

5. Feeling aggrieved by the said order, the petitioner filed a Writ Petition before this Court in W.P. No. 34343/2001. This Court in its order dated 07.12.2001 observed that it is difficult to regularise the admission of the petitioner by a judicial order. The matter was remitted to the University to independently examine as to whether the admission granted to the petitioner can be regularised having regard on the one hand the demand of keeping the admission process unpolluted and the prayer of the candidate for permitting her to benefit from the training already undergone by her. After the said order, University issued an Endorsement on 14.06.2002 stating that the Academic Council after considering the Judgment of the Court in W.P. No. 34343/2001 did not consider the request of the petitioner to issue the Provisional Degree Certificate in order to uphold the academic values and ethics in the University.

6. Petitioner challenged the said endorsement by filing a Writ Petition No. 27406/2002 before this Court contending that the University has not complied with the directions of the Court in the previous Writ Petition. This Court by the order dated 19.08.2002 quashed the said endorsement and again remanded the

matter to the University to independently examine whether the admission granted to the petitioner can or ought to be regularised. The operative portion of the order is as follows:

"Rule is made absolute. The matter is remanded back to the University to "independently examine whether the admission granted to the petitioner can or ought to be regularised having regard on the one hand to the demand of keeping the admission process unpolluted and the prayer of the candidate for permitting her to benefit from the training already undergone by her on the other".

7. Thereafter, petitioner has once again made a representation to the Vice Chancellor of the University as per Annexure "E." By the order impugned in this Writ Petition (Annexure "G" dated 30.10.2003) the University has once again turned down the request of the petitioner by upholding the earlier order dated 12.04.2001.

8. I have heard Sri S.P. Shankar, Learned Senior Counsel for the petitioner and Sri Shashidhar, Learned Counsel for the respondent - University.

9. Learned Counsel for the petitioner submits that the petitioner has already completed her course and has passed in all Semesters including the Last Semester by securing high marks. It is further submitted that the University ought to have considered the case of the petitioner sympathetically, having regard to the peculiar facts of the case. It is argued that the petitioner was a minor at the time of her admission to the I Year B.Sc. (Agri.) Course. Substantial amount was spent for her education. If the Degree is to be withdrawn at this stage, the petitioner will be put to irreparable injury and loss. It is further argued that having regard to the observation made by this Court on two previous occasions, the University ought to have considered the prayer of the petitioner for permitting her to benefit from the training already undergone. It is further submitted that the order impugned is not a speaking order and that the justification of the respondent in the statement of objections in support of the impugned order by supplying additional grounds is not permissible in law. He has relied on several decisions of the Hon'ble Supreme Court in support of his contentions that if the admission of the petitioner is annulled at this stage it may lead to depriving the services of a Graduate in agricultural sciences to the Society on whom public money has already been spent. It is further argued that if the respondent had taken steps to annul the admission of the Petitioner at the commencement of the Course, she would have made alternative arrangements for her studies.

10. On the other hand, the Learned Counsel for the respondent submits that the petitioner has secured the admission by suppression of material facts. Therefore, she is not entitled the benefit of her studies in the University. He has justified the action of the University in annulling her admission.

11. I have carefully considered the arguments made at the Bar and perused the materials placed on record.

12. The material facts are not in dispute. The fact that petitioner's parents were both in employment of the State Government at the time of her admission is also not in dispute. It is also not disputed that their agricultural income as per the Certificate issued by the Tahsildar is much less than the salary which they draw as the Government servants. Though the petitioner had filed application seeking admission in the prescribed form along with the declaration/Affidavits, now it is not in dispute that the main source of income of the parents of the petitioner is not from personal cultivation of land. It is also not in dispute that their principal means of livelihood is not from manual labour or agricultural land.

13. Section 5 of the University of Agricultural Sciences Act, 1963 (for short "Act") provides for admission to the University. Sub-Section (2) of Section 5 provides for reservation of seats for women, Scheduled Castes, Scheduled Tribes, Agriculturists or the Children of Agriculturists, who possess the minimum qualification prescribed in that behalf and who pass such practical tests in Agriculture as the State Government may by order specify, children and wards of freedom fighters, defence personnel and Ex- servicemen. Explanation to the said Sub-Section defines "Agriculturists" means a person who, as owner or tenant holds land and whose main source of income is from personal cultivation of the land and includes any person whose principal means of livelihood is from manual labour or agricultural kinds. The Section is as follows:

"Admission to the University" (1) The University shall, subject to the provisions of this Act and the Statutes, be open to all persons:

Provided that nothing in this Section shall require the University to admit to any course of study students larger in number than, or with academic or other qualifications lower than, those prescribed.

(2) Subject to the proviso to sub-section (1) the State Government may direct that the University shall reserve in colleges seats for women, the Scheduled Castes and the Scheduled Tribes, Agriculturists or the Children of Agriculturists who possess the minimum qualifications prescribed in this behalf and who pass such practical tests in Agriculture as the State Government may by order specify, children and wards of freedom fighters, defence personnel and ex-serviceman, and such socially and educationally backward classes of citizens as may be declared by the State Government in this behalf, and where such direction has been given, the University shall make reservation accordingly.

Explanation: For the purpose of this sub-section (1) "Agriculturist" means a person who, as owner or tenant holds land and whose main source of income is from personal cultivation of the land and includes any person whose principal means of livelihood is from manual labour on agricultural lands;

(2) "Freedom fighter" means a person of the category declared by the State Government from time to time as such".

14. Section 39 deals with framing of statutes. Sub-section (h) of Section 39

provides for framing of statutes for admission of students to the University and their enrolment and continuance as such. The Authorities of the University are empowered to make regulations as per Section 41 of the Act. The University has framed regulations governing under Graduate Degree Programme under Semester System. Regulation 3.2 provides for reservation of seats. It provides for reservation of seats for Agriculturists or Children of Agriculturists as defined under the Act. In respect of, category under Agriculturists or Children of Agriculturists including Agricultural labour, Certificate-II in the Format enclosed along with the application form certified by the Revenue Tahsildar of the area has to be enclosed. The application for admission is in the prescribed form, as provided in Regulation 3.3 of the Regulations. Regulation 3.4 provides for mode of admission. Regulation 3.4. provides for addition of 10 marks to the percentage of marks secured in Part II of the Second Year of the Karnataka Pre- University Examination or its equivalent for candidates whose parents/guardians profession is actual cultivation/ agricultural Labour/ poultry farming/livestock farming/ fishing/sericulture as evidenced by a Certificate from Tahsildar or a Revenue Officer of higher rank prescribed for the purpose, besides producing evidence to the effect that the candidate has studied from 1st to 10th Standard (inclusive) in School/s located outside the limits of Municipal Corporation Areas in Karnataka, as evidenced by certificate/s from the Head of the Institutions concerned. The conditions of admission are provided in Regulation 3.4.4.4 which states that in respect of seats set apart for children of agriculturists, admission shall be made strictly according to the merits based on the marks obtained in Part II of the Pre-University Examination and the marks obtained in Practical Tests.

15. Director of Instructions, Shimoga, who was asked to make an enquiry into the matter has summoned the petitioner's father T.K. Devaraj and recorded his statement on 23.08.1999. In the said statement the petitioner's father admitted that he was in Government service from 1977 and was working as a Junior Engineer, P.W.D., Honnali. He also admitted that his wife Smt. Jayamma was working as a School Teacher, Lower Primary Boys School, Ayanur Village. These facts were not disclosed in the application submitted to the University at the time of petitioner's admission. Therefore, petitioner was not entitled for addition of 10 marks, in accordance with Sub-Section (2) of Section 5 of the Act. It is needless to say that father of the petitioner being in Government service, ought to have disclosed the true state of affairs. Therefore, I am of the view that the seats secured by the petitioner is by suppression of material fact.

16. Now, the other question to be considered is whether the admission of the petitioner should be approved and the University should be directed to give the necessary Degree Certificate. As noticed above, this Court in W.P. No. 34343/2001 disposed of on 7.12.2001 had left it open to the University to independently examine whether the admission granted to the petitioner can be regularised. Again, this Court in W.P. No. 27406/2002 disposed of on 19.8.2002 has directed the University to independently examine whether the admission granted to the petitioner requires to be regularised. There is no dispute that the

petitioner was a minor at the time of her admission. She was admitted in the academic year 1995-96. She has successfully completed the course. The materials on record also show that the petitioner was a meritorious student, which is evident from the Certificate issued by the University at Annexure "F" dated 19.07.1999. It cannot be disputed that substantial amount has been spent by the petitioner to pursue her studies. She has completed the course in the year 1999. After the second remand, the University appears to have placed the matter before the Academic Council in its 137th Meeting held on 25th June 2003 and 26th June 2003. Records also show that they have secured legal opinion. The Learned Advocate who has given the legal opinion has opined that the admission of the petitioner requires to be regularised. Further, records also disclose that the Committee which has gone into the question has also recommended for approval of the admission of the petitioner. However, the Academic Council has passed a Resolution in the following terms;

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After detailed deliberation the Academic Council did not accept both, the Opinion of the legal counsel and recommendations of the committee and rejected to issue marks card and degree certificate in order to uphold the admission process "unpolluted". Further, the Academic Council decided to uphold the notification issued by the University vide No. R/ SA2/ UG/Adm/ 1995-96 dated April 12, 2001 cancelling the admission of the above candidate".

Consequently, an endorsement was issued to the petitioner dated 31.10.2003 marked as Annexure "G" to the Writ Petition in similar terms.

17. Sri S.P. Shankar, Learned Senior Counsel appearing for the petitioner submits that the petitioner has joined the course in the year 1995-96 and almost nine years have passed by now. She has already completed the course. It is also submitted that huge amount has been spent by the candidate for the completion of the course and if action is taken against the petitioner at this stage it may lead to depriving a Graduate in Agricultural Sciences to the Society, on whom public money has already been spent. Therefore, he submits that the admission of the petitioner may be approved. He has placed reliance of the decision of the Hon"ble Supreme Court in the case of Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, , A. Sudha Vs. University of Mysore and Another, , ANDHRA KESARI EDUCATION SOCIETY v. DIRECTOR OF SCHOOL EDUCATION and Ors. AIR 1989 SC 183, STATE OF MAHARASHTRA v. MILIND and Ors., (2001) 1 SCC 4 and R. Vishwanatha Pillai Vs. State of Kerala and Others, .

18. On the other hand, Sri H.N. Shashidhar, Learned Counsel for the respondent - University submits that since the petitioner has secured the seat by suppression of facts, her admission cannot be regularized. He has placed reliance on the decision of this Court in Soma Vs. State of Karnataka, and the decision of the1 Hon"ble Supreme Court in the case of Guru Nanak Dev University Vs. Parminder Kr. Bansal and another, and in the case of Gurdeep Singh Vs. State of

Jammu and Kashmir and others, .

19. In Rajendra Prasad Mathur's case (supra), it was found that the appellants therein were ineligible to be admitted to B.E. Degree Course. The Apex Court allowed the appellants to continue their studies holding that appellants should not suffer for the sins of the managements of the Engineering Colleges. Considering the fact that the student having completed the Course of Four years in the College, a lenient view was taken by the Court in favour of the students.

20. In Sudha's case (supra) the petitioner was ineligible for admission to the MBBS Course. In that case also the petitioner had filed false declaration as she was innocent about her ineligibility for admission. The authorities discovered the falsity in the declaration and cancelled her admission. The Court took a view that for no fault of the candidate she should not suffer. She was allowed to continue her studies in the College where she was admitted.

21. In Andhra Kesari Education Society's case (supra) the petitioners were admitted to the Colleges for study in B.Ed. Course.

The Authorities refused to grant affiliation to the said College. The order of refusal to grant affiliation to the College was confirmed by the High Court. However, the Hon"ble Supreme Court held that the students who were admitted on the strength of Interim Order of the Court lead to believe that the Court had permitted the appellant to admit them. In the circumstances, the Hon"ble Supreme Court has directed regularisation of their admission and permitted them to appear in the examination and publish their results. The relevant portion is as under:

"We consider, therefore, that it may not be proper to drive them to street if they have undergone the prescribed course with the necessary syllabi and other matters relating thereto. But it would be for the Director of School and the Registrar, Nagarjuna University to consider and satisfy themselves and not for this Court at once to permit them to appear in the examination.

In the result we dismiss the writ appeal, but direct respondents 1 and 3 to consider forthwith whether the students in the appellant's college have undergone the necessary B.Ed., course and if so, permit them to appear for the ensuing examination and publish their result".

22. In Milind's case (supra), the petitioner was admitted to a Medical Course on the strength of a Caste Certificate holding him as belonging to "Scheduled Tribe". Later it was found that the Petitioner did not belong to "Scheduled Tribe". The Apex Court held that the petitioner had done the Medical Course in the year 1985-86. Almost 15 years have been passed, by the time, the decision was rendered. In the circumstances, the Hon"ble Supreme Court did not upset the admission of the petitioner to the Medical Course. It is further held that the candidate cannot claim to belong to Scheduled Tribe any further or for any other constitutional purposes. The observations of the Hon"ble Supreme Court in this

connection are as follows:

"Respondent 1 joined the medical course for the year 1985- 86. Almost 15 years have passed by now. We are told he has already completed the course and may be he is practising as a doctor. In this view and at this Length of time it is for nobody's benefit to annul his admission. Huge amount is spent on each candidate for completion of medical course. No doubt, one Scheduled Tribe candidate was deprived of joining medical course by the admission given to Respondent 1. If any action is taken against Respondent 1, it may lead to depriving the service of a doctor to the society on whom public money has already been spent. In these circumstances, this judgment shall not affect the degree obtained by him and his practising as a doctor. But we make it clear that he cannot claim to belong to the Scheduled Tribe covered by the Scheduled Tribes Order. In other words, he cannot take advantage of the Scheduled Tribes Order any further or for any other constitutional purpose. Having regard to the passage of time, in the given circumstances, including interim orders passed by this Court in SLP (C) No. 16372 of 1985 and other related affairs, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment."

23. Again in R. Vishwanatha Pillai's case (supra), the Hon"ble Supreme Court was considering a similar case. The Petitioner in the said case was admitted to Engineering Course on the basis of a Caste Certificate. The Scrutiny Committee found that the father of the petitioner did not belong to Scheduled Caste. He had completed the Course of studies in the year 1996 under the Interim Orders of the High Court. Following the decisions in Milind's case, the Hon"ble Supreme Court has allowed the Petitioner to take his degree with a condition that he will not be treated as Scheduled Caste Candidate in future either in obtaining service or for any other benefits flowing from the caste certificate obtained by him. The relevant portion is as follows:

"In this case we find that the appellant had joined Regional Engineering" College in the year 1992. He completed the course of his studies in the year 1996 under the interim orders of (sic the High) Court which were subject to the final orders to be passed in the writ petition. No purpose would be served in withholding the declaration of the result on the basis of the examination already taken by him or depriving him of the degree in case he passes the examination. In terms of the orders passed by the Constitution Bench of this Court in state of Maharashtra v. Milind we direct that his result be declared and he be allowed to take his degree with the condition that he will not be treated as a Scheduled Caste candidate in future either in obtaining service or for any other benefits flowing from the caste Certificate obtained by him. His caste certificate has been ordered to be cancelled. Henceforth, he will be treated as a person belonging to the general category for all purposes."

24. Placing reliance on the decision of this Court in Soma's case (Supra) and in the case of Guru Nanak Dev University's case (supra) and in the case of

Gurudeep Singh's case (supra), Learned Counsel for the respondent submits that since the petitioner has secured the seat by suppression of material facts she is not entitled for approval of her admission. In Soma's case the petitioner had applied to the University for allotment of a seat in B. Sc (Agri.) Course claiming to be a person eligible for reservation under Group "C on the ground that his parents' income did not exceed Rs. 3,600/-. When she completed Second Semester Examination and was attending the classes in Third Semester, action was initiated against the petitioner for cancellation of the said admission. In Guru Nanak Dev University and Another's case (Supra), the candidate had lack of initial eligibility for admission to M.B.B.S. Course. In Gurudeep Singh's case (supra), the question was whether the selection of respondent No. 6 for admission to M.B.B.S. Course. The Hon'ble Supreme Court held that though it was for the Sports Council to decide about the inclusion or non-inclusion of any particular sport for the purposes of according consideration in the sports category, it was not just on the part of the authorities concerned to include sport Mountaineering in the list of approved Sports after the cut off date was complete, when the application were invited for selection or candidates for the admission to MBBS Course with a view to accommodate the respondent No. 6.

25. In this case petitioner was admitted to the B.Sc. (Agril.) Course in the year 1995-96. She was a minor at the time of her admission and her father had filed a false certificate claiming to be an Agriculturist. The University has initiated action against the petitioner after her completion of the Course. It is not in dispute that she has completed her Degree Course and it is not the case of the University that she did not possess minimum eligibility to be admitted to the said Course. Huge amount was spent on her for completion of the course. It is true that a seat was deprived to an Agriculturist for joining the Course by the admission of the petitioner. If any action is taken against the petitioner at this stage, it may lead to depriving the service of a Graduate in- Agricultural Sciences to the Society on whom public money has already been spent. The recent judgments of the Apex Court in Milind's case (supra) and Vishwanatha Pillai's case (supra) are directly applicable to the facts of this case. Having regard to the facts and the circumstances of the case, I am of the view that the admission of the Petitioner should be approved subject to the condition that she should not claim to be an "Agriculturist" in future either in obtaining service benefits or any other benefits.

26. In the result, the Writ Petition succeeds and it is accordingly allowed subject to the observations made above. The endorsement impugned in the Writ Petition (Annexure "G") is quashed. I direct the respondent to issue the Degree Certificate of B.Sc. (Agriculture) to the Petitioner within fifteen (15) days from the date of receipt of a copy of this order. No costs.